

November 17, 2000

*Via Facsimile and First-Class Mail*

Brenda Cabral, Air Quality Engineer  
Permit Services Division  
Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109

Re: Public Comment on Title V Permit for Crown Cork and Seal

Ms. Cabral,

The Golden Gate University School of Law's Environmental Law and Justice Clinic ("ELJC") is a public interest legal clinic that provides free legal services and education on environmental justice issues to San Francisco Bay Area residents, community groups, and public-interest organizations. On behalf of our client, Our Children's Earth Foundation, as well as for ourselves, we are pleased to submit the following comments on the compliance certification provision of the Title V Major Facility Review Permit for Crown Cork and Seal ("Crown"), proposed for issuance by the Bay Area Air Quality Management District ("District").

We are concerned that Crown's permit does not describe the facility's compliance status; nor does it include an adequate compliance schedule. Therefore the permit does not comply with either Federal or District regulations.

Under the Code of Federal Regulations, all Title V permits must have a compliance plan that contains: "[a] description of the compliance status of the source with respect to all applicable requirements" and "[a] compliance schedule." 40 C.F.R. § 70.5(c)(8), (8)(i), and (8)(iii). The permit must state that, if the source is in compliance, it will continue to comply, and that the source will comply with any future requirements on a timely basis. 40 C.F.R. § 70.5(c)(8)(ii)(A),(B) and (iii)(A),(B). If the source is not in compliance, the permit must also include a narrative description of how the source will achieve compliance and schedule of when it will do so. 40 C.F.R. § 70.5(c)(8)(ii)(C) and (iii)(C).

The District's regulations also require Title V major facility review permits to contain both a statement and a schedule of compliance. District Regulation 2-6-409.9 and 409.10. The District's Manual of Procedures (MOP) describes the information that the schedule of compliance must include. The MOP states if a facility is in compliance, the schedule will be a simple statement that the facility will continue to comply with all requirements. MOP, Volume II, Part 3, § 4.5(A). The MOP also states that the facility will comply with all future requirements in a timely manner, and if the facility is not in compliance the permit must include

a list of remedial measures and enforceable actions that will lead to compliance. MOP, Volume II, Part 3, § 4.5(B), (C).

In the proposed Title V Review Permit for Crown, there is no statement of compliance status. As such, the description of the Schedule of Compliance is inadequate. The Schedule of Compliance states:

The permit holder shall comply with all applicable requirements cited in this permit. The permit holder shall also comply with applicable requirements that become effective during the term of this permit.

Major Facility Review Permit, Schedule of Compliance, p. 19. Without knowing the facility's current status of compliance, this compliance schedule is meaningless. The permit must give this language context by connecting the facility's current activities (status of compliance) with its responsibilities under this review permit (schedule of compliance) to ensure the facility will comply with all applicable District, State, and federal regulations.

From the permit's language, it appears that Crown is in compliance, based on the compliance requirements as stated in the District's MOP. In addition to the schedule of compliance requirements described above, the MOP states that State law does not allow the District to issue a Title V permit to a facility out of compliance, unless the Hearing Board has issued the facility a variance or an order of abatement. MOP, Volume II, Part 3, § 4.5. The MOP further states that the schedule of compliance would include any variances or orders of abatement if such had been issued to the facility. *Id.* As the schedule of compliance in Crown's proposed permit does not include any mention of a variance or abatement order, and it contains a simple statement that the facility shall comply with all applicable and future requirements, it appears that the facility is in compliance.

However, a facility's compliance status must be explicitly stated. Both Federal and District regulations require a statement of compliance status. It is important that the permit include the facility's compliance status so the public will have sufficient information to comment on the permit. The public also needs to be assured that the District is adequately addressing the issue of a facility's compliance when issuing permits.

Therefore, ELJC requests that the District explicitly state whether or not Crown Cork and Seal is in compliance with all applicable District, State, and Federal regulations. It is also our request that the District explicitly state a facility's status of compliance, as well as its compliance schedule, in all the permits it issues.

Thank you for providing this opportunity to express our concerns. If you have any questions, you may contact me or Helen Kang at 442-6647.

Sincerely,

Lynne Saxton  
Student Clinician

